



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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5B-c

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-127

AUG 19 2011

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Return Receipt Requested

James Cagle, Risk Manager - EHS
Nu-West Industries, Inc.
Agrium Conda Phosphate Operations
3010 Conda Road
Soda Springs, Idaho 83276

Re: Off-site Sampling Plan Sampling and Analysis Work Plan Addendum, Nu-West Industries, Inc.,
Conda Phosphate Operations Facility; Administrative Order on Consent (AOC) for Nu-West
CPO Facility; Docket No. RCRA-10-2009-0186

Dear Mr. Cagle:

The purpose of this letter is to disapprove the Off-site Sampling Plan Sampling and Analysis Work Plan Addendum, dated August 5, 2011 (the "Work Plan"). The Work Plan contains a number of significant deficiencies and it has not addressed EPA's comments provided to Nu-West Industries, Inc. ("Nu-West") by letter dated May 18, 2011.

EPA provided the following comment on May 18, 2011:

Background data needs and how background levels are considered in decision rules for COPC definition and nature and extent determination must be defined in the WPA. Background measurements must include mean and confidence limits (U.S. EPA 2002). The site specific background sampling approach must utilize an MIS design and the WPA must include adequate rationale for design of off-site sampling locations. Previous work on Eastern Michaud Flats Superfund site in Pocatello, Idaho provides a template that can be used as a basis for an incremental soil sampling approach designed to:

- 1) Determine nature and extent of soil contamination by estimating mean and variance of COPCs
- 2) Estimate mean and variance of COPCs in undisturbed locations to estimate background levels

EPA and Nu-West discussed via conference call on July 19, 2011 EPA's comments. I followed up that call by providing documents related to the background sampling work performed at the Eastern Michaud Flats Superfund site (which is also known as FMC) via email, so that Nu-West would have an example to work from. No background sampling approach was provided at all in the August 5, 2011 Work Plan.

Paragraph 62 of the AOC requires a timeline for the work. No timeline was provided at all in the Work Plan submitted to EPA. In order to comply with the AOC, Nu-West will have to provide a timeline for the work in the revised Work Plan to be submitted to EPA.

Past submittals from Nu-West have frequently included the term "TBD" within the proposed project schedules for the different task items. Use of the term "TBD" does not provide the required timeline for when the work will be carried out. EPA has in the past shown flexibility on scheduling and has granted extensions in time for due dates when specific circumstances necessitated additional time. In fact, we provided an extension in time to August 5 for the submittal of this revised Work Plan. The AOC requires the Work Plan to include a timeline for the work and not "TBD" for the different task items.

I have also identified several screening level numbers in Table 2 of the Work Plan that will need to be corrected. These are described below.

The lowest of EPA Ecological Soil Screening Levels (SSLs) for Cr+3 (in this case for avian) is 26 rather than 23. Column 8 in Table 2 for chromium will need to be corrected to reflect this.

The Ecological SSLs for magnesium and manganese (in this case for plants) are switched. The Ecological SSL of 220 is actually the value for manganese not magnesium, as is reflected in the table. The background value must be used for magnesium. Column 8 in Table 2 will need to be corrected to reflect this. Please note that the Ecological SSLs were reported correctly in Table 3b.

No screening level for uranium is identified. Footnote "F" references Table 3c. The lowest screening level for uranium identified in Table 3c is 5.981 mg/kg (in this case for the short-tailed shrew). The screening benchmark for the phytotoxicity of uranium in soil is 5 mg/kg according to Efroymson et al 1997 (Table 1). Depending on the bioavailability of uranium (soil to food), the soil value may be higher or lower when adjusted for the wildlife benchmark. Use the lower of the two values (phytotoxicity or adjusted wildlife soil value) as the Ecological Screening benchmark. Use the higher bioavailability factor when adjusting the wildlife benchmark to soil (5.981 mg/kg). Report both values in Tables 2 and 3b.

In accordance with Article IX of the AOC, within 30 days of Nu-West's receipt of this disapproval letter, Nu-West is required to submit a revised Work Plan that responds to the comments received and/or corrects deficiencies identified by EPA or invoke dispute resolution. A failure to comply with the AOC requirements can result in enforcement action.

If you have any questions, feel free to call me at (206) 553-2964. Alternatively, you may reach me via email at: Magolske.Peter@epamail.epa.gov. Thank you for your attention to this important matter.

Sincerely,



Peter Magolske
Air / RCRA Compliance Unit

cc: Brian Monson
Idaho Department of Environmental Quality

P. Scott Burton
Esq. Hunton and Williams LLP